Supreme Court, U.S.
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No. 85-1078

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

ZAYLE A. BERNSTEIN,

Petitioner,

v.

PORTLAND SAVINGS AND LOAN ASSOCIATION,

Respondent.

RESPONDENT'S REPLY MEMORANDUM IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF TEXAS

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Respondent respectfully submits this memorandum in reply to Petitioner's Reply Memorandum in Support of the Petition for a Writ of Certiorari. In the brief in support, Petitioner incorrectly presents the facts of the case.

1. In the brief in support, Petitioner refers to DiGiulian, Spellacy & Bernstein with a "P.A.", designating a professional association, after their name (Brief in Support, p.1). DiGiulian, Spellacy & Bernstein did not use any designation in their firm name (PX-1 and PX-10), but held themselves out as a partnership. Not only did they hold themselves out to the general public as a partnership, but Sidney T. Bernstein testified that DiGiulian, Spellacy & Bernstein was, in fact, a partnership by testifying that he had been designated

as a partner in the law firm (R. 1018); that the tax returns indicated he was a partner (R. 1018); that when he left the law firm, he took the position he was a partner and settled his account with the law firm on that basis (R. 1020 and 1021); and that when he did sever his relationship with the law firm, it was uncontested that he was a partner and his brother did not question that he was a partner (R. 1024).

2. The pleadings certainly put in issue the question of partnership for in Plaintiff's Second Amended Original Petition, suit is brought against "the Defendants Zayle A. Bernstein and Sidney T. Bernstein, individually and doing business as a partnership" and it is alleged in the suit that Defendants "have held themselves out as partners at all times relevant herein and are estopped to deny that a partnership existed between the Defendants".

3. The Court of Appeals stated:

> "Appellees submitted a copy of the Florida Professional Service Corporation Act to the trial court which took judicial notice of said statute. Under this act, the corporate name of a Professional Service Corporation must contain the last names of some or all of the shareholders and the word "chartered," or the words "professional association" or the abbreviation "P.A." However, it is permissible for the corporation to render professional service under a name which is identical to its corporate name, except the word "chartered," or "professional association" or the abbreviation "P.A." may be omitted so long as the corporation has first registered the name to be so used in the manner required for fictitious names. FLA. STAT. ANN. §621.12 (West 1977). Appellees introduced no evidence that they had complied with this last provision by registering the name of their firm."

The Court of Appeals is correct in its decision that there was no evidence that DiGiulian, Spellacy & Bernstein

registered the name in accordance with the Florida law and, accordingly, Appellees failed to meet their burden of proof. There *was* evidence demonstrating (1) the failure of DiGiulian, Spellacy & Bernstein to use the word "chartered" or the words "professional association" or the abbreviation "P.A." in their firm name and there was evidence demonstrating (2) that the firm acted as a partnership and (3) that Zayle A. Bernstein and Sidney T. Bernstein were members of the firm. Therefore, under the pleadings, there was a contest over the issue of partnership and at no time was the issue conceded. The issue beng contested and Appellees failing to meet their burden, the Court of Appeals was correct in its decision.

It is respectfully submitted that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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